

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

November 3, 2011

A meeting of the Board of Environmental Protection was held on Thursday, November 3, 2011, at the Department of Public Safety, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Alvin Ahlers, Gary Curtis, Robert Foley, Richard Gould, and Susan M. Lessard

**Absent:** Elizabeth Ehrenfeld and M. Wing Goodale

**Staff:** George Seel, Bureau of Remediation and Waste Management  
Mark Margerum, Bureau of Land and Water Quality  
Mark Stebbins, Bureau of Land and Water Quality  
David Courtemanch, Bureau of Land and Water Quality

**Others:** Cynthia S. Bertocci, Board Executive Analyst  
Jan McClintock, Assistant Attorney General  
Terry Dawson, BEP Administrative Assistant

*(Meeting adjourned at approximately 12:30 p.m.)*

Chair Lessard began the meeting with two rulemaking public hearings as follows:

- **Public Hearing at 9:00 a.m. In the Matter of:**  
Chapter 692, Siting of Oil Storage Facilities / Amendments

The Board voted (5-0-0-2) on a motion to terminate rulemaking to allow staff to continue to consult with the regulated industry for the purpose of more fully evaluating the proposed modifications offered by Maine Aggregate Association.

The vote was taken pursuant to 38 M.R.S.A, sections 341-D(1-C) and 341-H(1).  
*Board members Alvin Ahlers, Gary Curtis, Robert Foley, Richard Gould and Susan Lessard supported the motion. Board members Elizabeth Ehrenfeld and M. Wing Goodale were absent.*

- **Public Hearing at 9:30 a.m. In the Matter of:**  
Chapter 378, Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Products / Amendments

#### **I. DEPARTMENTAL**

- A. COMMISSIONER'S COMMENTS:** None
- B. COMMENTS FROM THE BEP CHAIR:** None  
Commissioner Aho is out of state on vacation; Heather Parent of the Commissioner's staff is at the Legislature at a meeting of the Environment and Natural Resources Committee.
- C. EXECUTIVE ANALYST COMMENTS:** None
- D. BOARD CALENDAR:** Reviewed
- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** Reviewed.
- F. EXECUTIVE SESSION:** None

#### **II CONSENT AGENDA ITEMS:**

The Board voted (2-0-3-2) to approve consent agenda item 1 as presented.

The vote was taken pursuant to 38 M.R.S.A. §341-D.

*Board members Richard Gould, and Susan M. Lessard voted to support the motion. Board members Alvin Ahlers, Gary Curtis and Robert Foley abstained. Board members Elizabeth Ehrenfeld and M. Wing Goodale were absent.*

1. BEP MEETING MINUTES – September 15, 2011 (Approval)

The Board voted (5-0-0-2) to approve consent agenda item 2 as presented.

The vote was taken pursuant to 38 M.R.S.A. §341-D.

*Board members Alvin Ahlers, Gary Curtis, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board members Elizabeth Ehrenfeld and M. Wing Goodale were absent.*

2. BEP MEETING MINUTES – October 6, 2011 (Approval)

### III. Regular Agenda

1. CHAPTER 305, PERMIT BY RULE, SECTION 20 ACTIVITIES LOCATED IN, ON OR OVER HIGH OR MODERATE VALUE INLAND WATERFOWL AND WADING BIRD HABITAT, OR SHOREBIRD NESTING, FEEDING, AND STAGING AREAS / AMENDMENTS (post to public hearing)

Staff: Mark Margerum, Bureau of Land and Water Quality

The Board voted (5-0-0-2) to post to public hearing amendments to Chapter 305 Permit-By-Rule Section 20, Activities located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas. Proposed amendments include the following: a definition of “structure”, language that allows new activities on upland areas of undeveloped lots in moderate value inland waterfowl and wading bird habitats (e.g. buildings, roads, and driveways), set-back requirements and limits on clearing of vegetation.

The vote set a public hearing date of December 1, 2011 and established a deadline of December 12, 2011 for submission of written public comment.

The vote was taken pursuant to 38 M.R.S.A., sections 341-D(1-C), 341-H(1), 480-H and PL 2011, Chapter 359.

*Board members Alvin Ahlers, Gary Curtis, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board members Elizabeth Ehrenfeld and M. Wing Goodale were absent.*

### Informational Session

- Water Quality Classification System  
Staff provided an overview of the State’s water quality classification system which included: relationship to the Clean Water Act; Maine system for classifying fresh surface waters, marine waters and groundwater; and the process for establishing and changing the classification of a given waterbody.  
Staff: David Courtemanch, Bureau of Land and Water Quality
- Overview of Natural Resource Protection Act (NRPA).  
Staff reviewed the types of natural resources governed by the act, the types of activities that require a permit, various permitting levels, and the criteria for obtaining a permit.  
Staff: Cynthia Bertocci, BEP Executive Analyst

*Next Regular Meeting –Thursday, December 1, 2011 – Dept. of Public Safety, Augusta*

